(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 768 OF 2002

BETWEEN

Sewakram S/o Manikram Mangarel, aged about 22 years, resident of Siddharth Nagar, Durg, Tahsil and District Durg (C.G.)

PETITIONER

P.R. No. 76/02
Presented by Shri R.K. Shukla
dated 11.4.02

AND

1. The State of Chhattisgarh,
Through : Secretary,
Department of Urban Administration and Development, D.K.S. Building, RAIPUR (CG).

SR 2. Municipal Corporation, Durg,
Through its Commissioner,
Municipal Corporation, Durg, Tahsil and District Durg (CG).

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

1. Particulars of the Petitioner :

As stated in the cause title above.

2. Particulars of the Respondents :

As stated in the cause title above.

....02.

पथ आयुक्त, नगर निगम दुर्ग, जिला दुर्ग

11/4/02

(57)

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 768 OF 2002

SEVAK RAM

Vs.

STATE OF CHHATTISGARH AND ANOTHER

Petitioner by Shri Ajay Shrivastava with Shri Somkant Verma, Advocates.

Respondent No. 1/State by Shri Sanjay S. Agrawal, Government Advocate.

Respondent no. 2 by Shri Avinash Mishra, Advocate.

O R D E R

Per Hon'ble Fakhruddin, J

Heard.

2. By this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the order Annexure P-1 dated 30-6-2001 passed by the respondent no. 2/Municipal Corporation Durg whereby his appointment issued on 31st May 2001 has been cancelled.

3. Brief facts of the case are that petitioner's mother Smt. Munni wife of Kunjilal was working in the regular post under respondent no. 2 as Safai Kamgar. She discharged her duties sincerely. The State Government considered the sufferings of the Safai Karmchari and keeping in view the welfare of the Safai Kamgar, framed a scheme regarding voluntary retirement and giving appointment to one of their family member.

4. The petitioner submits that the State of Madhya Pradesh for the said purpose had issued orders bearing no. 1489/93/18/1/81 dated 7-6-1981. It was noted that the directions issued on 7-6-1981 were not being fully complied with, therefore, the State of Madhya Pradesh before re-organization again reiterated directions vide Annexure P-2 dated 3-4-2000 to the Municipal Corporations/Municipal Councils drawing the attention of the Commissioners and Chief Municipal Officers as well as Nagar Panchayats to give effect to the directions issued earlier on 7-6-1981. In the said letter, it was stated that the State has decided that in case of death of Safai Kamgars, preference should be given to the family members of the deceased Safai Kamgars to the vacant post of Safai Kamgar. It was also stated that as Safai Kamgars are engaged with arduous and menial work, they fell prey and suffer from various diseases resulting in early death or due to nature of work suffer from such ailment even at half age compare to others and as such, if the Safai Kamgars become sick before attaining the age of superannuation, they should be examined by the Medical Board and if on the basis of medical certificate, if they want to take voluntary retirement, one of the family members of the Safai Karmgars should be appointed as Safai Kamgar and the same be informed to the State as well as to the Directorate. It will be appropriate to quote the same:-

नगरीय प्रशासन एवं विकास संचालनालय, मध्यप्रदेश

क्रमांक/स्था/एक/२०००/८४६३, भोपाल, दिनांक ३-४-२०००

प्रति,

१.समस्त आयुक्त
नगरपालिक निगम, म०प्र०

२.समस्त मुख्य नगरपालिका अधिकारी,
नगरपालिका परिषद/नगर पंचायत, म०प्र०

(59)

विषयः- स्वैच्छिक सेवा निवृत्त सफाई कर्मचारियों के पद पर उनके परिवारजनो को नियुक्ति में प्राथमिकता।

संदर्भः- म०प्र०शासन, स्थानीय शासन विभाग के आदेश क्र. १४८६/६३/१८/१/८१, दिनांक ७-६-८१.

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उल्लिखित विषय में संदर्भित पत्र देखें, जिसके द्वारा स्थानीय निकायों में सफाई कर्मचारियों के रिक्त पद पर सफाई कर्मचारियों के परिवारजनों को मानवीयता के आधार पर नियुक्ति में प्राथमिकता दिये जाने के निर्देश दिये गये थे, इसका पालन निकायों द्वारा पूर्ण रूप से नहीं किया जा रहा है।

इस संबंध में शासन द्वारा निर्णय लिया गया है कि स्थानीय निकायों में कार्यरत सफाई कामगार की मृत्यु उपरांत रिक्त हुए पद पर उनके परिवारजनों को नियुक्ति में प्रथम वरीयता दी जाय। चूंकि सफाई कामगार अस्वच्छ धन्धों से जुड़े रहने के कारण अधिवार्षिकी आयु के पूर्व अस्वस्थ रहते हैं तो मेडिकल बोर्ड से स्वास्थ्य परीक्षण कराया जाकर चिकित्सा प्रमाण पत्र के आधार पर यदि स्वैच्छिक सेवा-निवृत्ति चाहता है तो उनके परिवार के सदस्यों में से जिसे वह चाहता है, सफाई कामगार के पद पर रखा जाय और इसकी सूचना शासन एवं संचालनालय को भी दी जाय।

सही/स्पष्ट
(एम.ए.खान)
संचालक,
नगरीय प्रशासन एवं विकास,म०प्र०भोपाल

कार्यालय उपसंचालक नगरीय प्रशासन एवं विकास, रायपुर

पृ०क्र०१२६६/लेखा/एक-१/२०००, रायपुर,दि० १२/७/२०००,

प्रतिलिपिः-

१. आयुक्त नगरपालिक निगम, रायपुर, दुर्ग, भिलाई, राजनांदगांव।
२. समस्त मुख्य नगरपालिका अधिकारी, नगरपालिका परिषद/नगर पंचायत, रायपुर एवं बस्तर संभाग।

:-की ओर अग्रेषित। कृपयासंचालनालय के उक्त निर्देशों के अनुसार आवश्यक कार्यवाही करने का कष्ट करें।

सही/अस्पष्ट
उपसंचालक,
नगरीय प्रशासन एवं विकास,
रायपुर(म०प्र०)

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It is not disputed that under Reorganization Act the notifications, instructions issued will continue to remain valid unless they are altered or modified.

5. Pursuant to this letter dated 3-4-2000, various persons including Smt. Munni was got medically examined and the Medical Board issued the certificate to Smt. Munni, which was placed before the Mayor-in-Council and the Mayor-in-Council passed a unanimous resolution bearing no. 9 dated 10-4-2001 and accepted the case of the petitioner's mother regarding voluntary retirement, which is reflected from Annexure P-4. Consequent thereof, the petitioner was given employment as Safai Kamgar as per Annexure P-5 dated 31-5-2001. Copy of this order was also sent to the State Government.

6. Learned counsel for the petitioner contended that it is pursuant to the notification dated 3-4-2000 that the petitioner's mother opted for the voluntary retirement and the appointment of the petitioner has also been made pursuant to said notification and he joined on 8-6-2001. The said appointment has been cancelled illegally and without any notice or holding any inquiry. He further contended that the cancellation of appointment is illegal and contrary to law. It is stated in para 6.8 of the petition that other persons were also serving as Safai Kamgars and they were not removed. Some names have been mentioned in paragraph 6.8 of the petition.

7. The respondent no. 1/State has not filed any return in spite of various opportunities. The respondent no. 2 has filed the return.

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8. Learned counsel appearing for the respondent no. 2 stated that the petitioner was appointed on probation for a period of 2 years as voluntary retirement was taken by the mother of the petitioner. He however stated that on instructions from the State, the petitioner's services have been terminated, as mentioned in page 11 of the document dated 30th July 2001 which has been filed along with the application I.A. No. 10107/2005. He reiterated that in compliance of letter dated 4-4-2001, the petitioner's services have been terminated. It is stated in para 9 of the return that the erstwhile State of Madhya Pradesh vide its circular dated 7-6-1981 issued guidelines for employment of one family member of Safai Kamgars who take premature retirement on health ground. In para 12 of the return, it has been stated that the petitioner was given appointment strictly on temporary basis as mentioned in letter dated 3-4-2000 and the Corporation referred it to the State Government for confirmation, however, the service was terminated in compliance of circular no. 797 dated 4-4-2001 on telephonic information.

9. The document dated 30th July 2001 submitted by the Commissioner of the Corporation to the State itself states that appointment to the petitioner has been given pursuant to the direction dated 3-4-2000. It is also stated in the letter dated 30-7-2001 that pursuant to the circular dated 3-4-2000, in the month of December 2000, 8 persons, in the month of January 2001, 2 persons and in the month of March 2001, 1 person, thus totaling 11 persons submitted applications for voluntary retirement and for employment to one of their family members.

They were produced before the Medical Board and after obtaining medical certificates from Medical Board, their applications for appointment were placed before the Mayor-in-Council. The Mayor-in-Council accepted the same and all the 11 Safai Kamgars were given voluntary retirement and 10 Safai Kamgars were given appointment. In the petitioner's case, some delay occurred in issuing appointment order though his case was received in December 2000. It is further stated that on receiving telephonic instructions, the services have been terminated.

10. Shri Shrivastava, learned counsel for the petitioner submitted that circular issued on 4-4-2001 is not applicable to Safai Kamgars. Even if by any stretch of imagination it is held to be applicable, then also it does not direct that earlier appointments should automatically be cancelled. Counsel contended that the instructions can at the most relate to the new appointment. It does not prohibit appointment of Safai Kamgar as contemplated under Annexure P-2.

11. Learned counsel for the petitioner relied on the decision in the case of **Director General of Police and others –v- Mrityunjoy Sarkar and others** reported in **AIR 1997 SC 249**. It was a case where the respondent was appointed as constable in State Armed Police on the basis of list furnished by Employment Exchange. They were discharged from service on the ground that they produced a fake list. The Hon'ble Apex Court upheld the order of the High Court setting aside the discharge. Counsel contended that no opportunity has been given to the petitioner and no inquiry has been held and principles of natural justice

have been violated. He further placed reliance on the decision in the case of **Smt. Usha Yadav .v. State of Madhya Pradesh and others** reported in **2002(2) M.P.H.T. 315**. It was a case where the petitioner was a Anganwadi Worker. She was removed without issuance of show-cause notice and without conducting any enquiry and no charge was framed against her, she filed the petition on the ground of violation of principles of natural justice, it was held that principles of natural justice are inhered in every administrative action carrying adverse civil consequences.

12. Learned counsel contended that in the instant case, the State is also bound by the doctrine of promissory estoppel. In the present case, the State issued notification dated 3-4-2000 and the employees in good faith acted on it. The State is bound by doctrine of promissory estoppel as has been held in the case of **M/s. Motilal Padampat Sugar Mills Co. Ltd. –v- The State of Uttar Pradesh and others** reported in **AIR 1979 621.**

13. Shri Mishra, learned counsel appearing for the respondent no. 2 Corporation has filed a document dated 13-7-2001, which was received in the office on 20-7-2001. It is said that by this order, notification dated 3-4-2000 has been cancelled.

14. Pursuant to circular dated 3-4-2000, the petitioner's mother took voluntary retirement and the petitioner was given appointment and he was working since 8-6-2001. On 13-7-2001, another circular was issued canceling the circular dated 3-4-2000. The order dated 3-4-2000 remained in operation till 13-7-2001. The petitioner was appointed on 31st May 2001 and he was

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working since 8-6-2001. Therefore, appointment made pursuant to order dated 3-4-2000 cannot be held to be illegal. The order dated 13-7-2001 will be operative from 13-7-2001 and not before. This document nowhere indicates that it is retrospective. The appointment made during the period from 3-4-2000 to 13-7-2001 cannot be held to be illegal. The document filed by the respondent no. 2 dated 30-7-2001 itself states that the appointments, in fact, have already been made. It is not the case of the Corporation or the State that the services have been terminated because working was not satisfactory. The Corporation-respondent no. 2 on the other hand stated that the posts are vacant and their services be continued. The corporation authorities cancelled the appointment merely on telephonic instructions. It is really very unfortunate. The authorities ought not to have acted like this.

15. In view of the facts and circumstances and the discussions made in the foregoing paragraphs, it is a case where great injustice has been done to the Safai Kamgars inasmuch as they were placed before the Board on the pretext that one of the family members would get employment and now after the person sought voluntary retirement and the family member got the job and appointment, the same has been cancelled without any show cause and without any enquiry and neither the original person is in job nor his nominee and the post is also lying vacant. The family is suffering from such atrocity. It is for the State to examine as to what extent it has caused atrocity on the family of Safai Kamgar. The impugned order Annexure P-1 dated 30-6-2001 passed by the respondent no. 2 is illegal, in contravention of law

and liable to be set aside. The petitioner is entitled to be reinstated in service with all the consequential benefits.

16. Consequently, the petition is allowed with costs. Counsel Fee Rs. 2000/-.

Sd/-
Fakhruddin
Judge

1-12-2005

[redacted]niak/-